United Nations CED/C/13/4

International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Report on follow-up to the concluding observations of the Committee on Enforced Disappearances*

I. Introduction

1. The present report reflects the information received by the Committee between its eleventh and thirteenth sessions in follow-up to its concluding observations on Burkina Faso (CED/C/BFA/CO/1/Add.1), Iraq (CED/C/IRQ/CO/1/Add.1), Kazakhstan (CED/C/KAZ/CO/1/Add.1), Montenegro (CED/C/MNE/CO/1/Add.1) and Tunisia (CED/C/TUN/CO/1/Add.1) and the assessments and decisions it adopted at its thirteenth session.

2. During the ninth and tenth sessions of the Committee, a constructive dialogue took place with the States and concluding observations were adopted. The assessments contained in this report only refer to the specific recommendations that were selected for the follow-up procedure and in relation to which the States parties were requested to submit information within one year after the adoption of the concluding observations. The present report does not constitute an assessment of the implementation of all the concluding observations made to the State party nor a comparison between States parties.

3. To carry out its assessment of the information provided by the States parties concerned, the Committee uses the criteria described below:

Assessment of replies

A. Reply/action satisfactory

Reply largely satisfactory

B. Reply/action partially satisfactory

Substantive action taken, but additional information required

Initial action taken, but additional information and measures required

C. Reply/action not satisfactory

Reply received but action taken does not implement the recommendation

Reply received but not relevant to the recommendations

No reply received concerning a specific matter in the recommendation

* Adopted by the Committee at its thirteenth session (4-15 September 2017).

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Assessment of replies

D. No cooperation with the Committee

No reply received after reminder(s)

E. The measures taken are contrary to the Committee's recommendations

The reply reveals that the measures taken are contrary to the Committee's recommendations

II. Assessment of follow-up information

A. Iraq

Ninth session (September 2015)

Iraq

Concluding observations:	CED/C/IRQ/CO/1, adopted 16 September 2015
Recommendations to be followed up:	Paragraphs 14, 29 and 34
Reply:	CED/C/IRQ/CO/1/Add.1, due 18 September 2016; received on 15 February 2017
Information from non-governmental organizations:	Alkarama received on 24 July 2017

Paragraph 14: The Committee recommends that the State party adopts the legislative measures necessary to ensure that, as soon as possible:

(a) **Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties which take account of its extreme seriousness;**

(b) **Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention and regardless of the date of perpetration.**

State party's reply

The reply of the State party can be consulted in CED/C/IRQ/CO/1/Add.1.

Committee's evaluation

[C]: The Committee takes note of the information provided by the State party and the State party's willingness to harmonize its criminal legislation with the definition in article 2 of the Convention. However, the Committee notes that it has not received sufficient information regarding the status of the bill mentioned in the State party's response intended to incorporate enforced disappearance as an autonomous crime in line with article 2 of the Convention. The Committee would like to emphasize that criminalizing enforced disappearance as an autonomous offence can serve as an important safeguard against impunity and as a preventive measure to ensure the non-occurrence of this crime. Therefore, the lack of an autonomous offence for this crime may prevent the State party from accomplishing its obligations to combat impunity for the crime, guarantee the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person and make the offence of enforced disappearance punishable by appropriate penalties in line with article 7 of the Convention. The Committee further observes that no information has been provided regarding the content of the bill or the penalties provided for the crime of enforced disappearance. The

Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its concluding observations (CED/C/IRQ/CO/1), to provide information on the measures taken to implement it. The Committee further observes that no information has been provided by the State party regarding its recommendation to ensure that enforced disappearance as a crime against humanity is criminalized in accordance with article 5 of the Convention and regardless of the date of perpetration. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its concluding observations, to provide information on the measures taken to implement it.

Paragraph 29: The State party should adopt all the measures necessary to ensure that no person is held in secret detention, including by guaranteeing that all persons deprived of liberty are afforded, de jure and de facto, since the outset of their deprivation of liberty all the fundamental legal safeguards provided under article 17 of the Convention and other human rights treaties to which Iraq is a party. In particular, the State party should guarantee that:

(a) **Deprivations of liberty are carried out only by officials authorized by law to arrest and detain persons and in strict compliance with the law;**

(b) **Persons deprived of their liberty are held solely in officially recognized and supervised places of deprivation of liberty;**

(c) **All persons deprived of their liberty can communicate without delay and regularly with their families, counsel or any other person of their choosing and, in the case of foreigners, with their consular authorities;**

(d) **All deprivations of liberty, without exception, are entered in uniform registers and/or records which include, as a minimum, the information required under article 17 (3) of the Convention;**

(e) **Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officers responsible are adequately sanctioned;**

(f) **Any person with a legitimate interest can have prompt and easy access anywhere in the territory to at least the information listed in article 18 (1) of the Convention.**

State party's reply

The reply of the State party can be consulted in CED/C/IRQ/CO/1/Add.1.

Committee's evaluation

[C]: While taking note of the information provided by the State party and welcoming the submission of a new bill on prison management, the Committee observes that it has not been provided with sufficient information about any measures taken by the State party, since the adoption of its concluding observations (CED/C/IRQ/CO/1), on:

(a) Ensuring that no person is held in secret detention, including by guaranteeing that all persons deprived of liberty are afforded, de jure and de facto, since the outset of their deprivation of liberty all the fundamental legal safeguards provided under article 17. In particular, the Committee notes that the State has not provided any information on the content of the new bill on prison management and how its regulations and provisions address the recommendation of the Committee;

(b) Ensuring that any deprivation of liberty is only carried out by officials authorized by law to arrest and detain persons and in strict compliance with the law and that persons deprived of liberty are only held in officially recognized and supervised places of deprivation of liberty;

(c) Ensuring that all persons deprived of liberty can communicate without delay

and regularly with any person of their choosing and, in the case of foreigners, with their consular authorities;

(d) Ensuring that all deprivations of liberty, without exception, are entered in uniform registers and/or records which include, as a minimum, the information required under article 17 (3) of the Convention, that these registers and/or records are filled out and updated promptly and accurately and that they are subject to periodic checks and, in the event of irregularities, the officers responsible are adequately sanctioned;

(e) Ensuring that any person with a legitimate interest can promptly and easily access anywhere in the territory at least the information listed in article 18 (1) of the Convention.

Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its concluding observations, to provide:

(a) Additional information on the status of approval of the bill, its content and how its regulations and provisions address the Committee's recommendation;

(b) Information on any action taken to ensure that deprivations of liberty are carried out only by officials authorized by law to arrest and detain persons and in strict compliance with the law;

(c) Information on actions taken to ensure that persons deprived of liberty are held solely in officially recognized and supervised places of deprivation of liberty and that they can communicate without delay and regularly with their families, counsel or any other person of their choosing and, in the case of foreigners, with their consular authorities;

(d) Information on any measures taken to ensure that all deprivations of liberty, without exception, are entered in uniform registers and/or records which include, as a minimum, the information required under article 17 (3) of the Convention, and that these registers and/or records are filled out and updated promptly and accurately, that they are subject to periodic checks and, in the event of irregularities, the officers responsible are adequately sanctioned;

(e) Information on any action taken to ensure that any person with a legitimate interest can have prompt and easy access anywhere in the territory to at least the information listed in article 18 (1) of the Convention.

Paragraph 34: The State party should redouble its efforts in order to ensure that all persons who were forcibly disappeared and whose fate is not yet known are searched for and located without delay and that, in the event of death, their remains are identified, respected and returned. In this sense, it should also guarantee the effective coordination and cooperation between the authorities responsible for searching for disappeared persons and identifying their remains in the event of death, and ensure that they have the necessary financial, technical and human resources to enable them to carry out their work promptly and effectively. In addition, the State party should adopt the measures necessary to ensure the swift entry into force of the amendment to the Protection of Mass Graves Act (Act No. 13 of 2015), as well as the effective implementation of the legislative framework concerning mass graves. The Committee recalls that, in the light of article 24 (6) of the Convention, the State party should ensure that investigations continue until the fate of the disappeared person has been clarified.

State party's reply

The reply of the State party can be consulted in CED/C/IRQ/CO/1/Add.1.

Committee's evaluation

[C]: While taking note of the information provided by the State party, the Committee

[illegible]

observes that it has not received sufficient information regarding any actions taken to implement its recommendation since the adoption of its concluding observations (CED/C/IRQ/CO/1). In particular, the Committee notes that the State has not provided sufficient information on the roles of the authorities mentioned, namely the Supreme Judicial Council, the Human Rights Division, the Presidency of the Public Prosecution Service, the court of enquiry, the Human Rights Department in the Ministry of Defence, the military and the security services, and the Martyrs Foundation, in the search for and location of all persons who have been forcibly disappeared and whose fate is not yet known and that, in the event of death, in the identification and return of their remains. In that respect, the Committee further notes that it has not received information on any actions taken by the State to ensure the effective coordination and cooperation between those and other authorities that may be responsible or involved in searching for disappeared persons and identifying their remains in the event of death, and ensure that they have the necessary financial, technical and human resources to enable them to carry out their work promptly and effectively. Finally, the Committee observes that the State has not provided any information on the status of the amendment to the Protection of Mass Graves Act (Act No. 13 of 2015), whether it has entered into force, or on any measures taken to ensure the effective implementation of the legislative framework concerning mass graves. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 43 of its concluding observations, to:

(a) Provide information on the efforts made by the State party and any measures taken to ensure that all enforced disappeared persons whose fate is not yet known are searched for and located without delay and that, in the event of death, their remains are identified, respected and returned;

(b) Provide additional information about the authorities mentioned in the State party's response, and any others that may exist, that are involved in the search for disappeared persons and the identification of their remains in the event of death, provide clarification about their roles and provide information on how they cooperate and coordinate their efforts. The Committee would also like to receive information on any measures taken by the State party to ensure that those authorities have the necessary financial, technical and human resources to enable them to carry out their work promptly and effectively;

(c) Provide confirmation on whether the amendment to the Protection of Mass Graves Act (Act No. 13 of 2015), to make it also applicable to mass graves dating from the period after 2003, has entered into force;

(d) Provide information on any measures taken to ensure the effective implementation of the legislative framework concerning mass graves.

Action to be taken

A letter should be sent to the State party communicating the Committee's evaluation.

Follow-up information on the implementation of all the recommendations to be submitted by: 18 September 2018

B. Montenegro

Ninth session (September 2015)

[illegible]

Concluding observations: CED/C/MNE/CO/1, adopted 16 September 2015

Recommendations to be followed up: Paragraphs 9, 25 and 29

Montenegro

Reply: CED/C/MNE/CO/1/Add.1, due 18 September 2016; received 8 December 2016

Paragraph 9: The Committee recommends that the State party adopt the measures necessary to make enforced disappearance an autonomous offence in line with the definition contained in article 2 of the Convention. It further recommends that the offence be punishable by appropriate penalties which take into account its extreme seriousness, and that a system of superior responsibility that is in accordance with article 6 (1) (b) of the Convention be applicable to this offence.

State party's reply

The reply of the State party can be consulted in CED/C/MNE/CO/1/Add.1.

Committee's evaluation

[C]: The Committee takes note of the information provided by the State party and of its statement that enforced disappearance is regulated and sanctioned in Montenegro, and there is no need to criminalize enforced disappearance as an autonomous offence. However, the Committee is concerned that, even though the Montenegrin legislation contains elements related to enforced disappearance, they are not sufficient to encompass all the elements and modalities of an enforced disappearance, as defined in article 2 of the Convention. The Committee would like to emphasize that criminalizing enforced disappearance as an autonomous offence can serve as an important safeguard against impunity and as a preventive measure to ensure the non-occurrence of this crime. Therefore, the lack of an autonomous offence for this crime may prevent the State party from accomplishing its obligations to combat impunity for the crime, guarantee the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and to make the offence of enforced disappearance punishable by appropriate penalties, in line with article 7 of the Convention. In addition, the Committee observes that no information has been provided regarding any actions taken to ensure that appropriate penalties are introduced for the seriousness of this crime. Finally, the Committee has not received information on any measures adopted to ensure that a system of superior responsibility is applicable to this offence in accordance with article 6 (1) (b) of the Convention. In view of the above, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations (CED/C/MNE/CO/1), to report on any measures and action taken to implement the recommendation.

Paragraph 25: The Committee recommends that the State party take the measures necessary to ensure that, in practice, all persons deprived of their liberty can communicate without delay with their families or any person of their choosing and have access to an independent lawyer from the very outset of the deprivation of liberty. It also recommends incorporating the right to challenge the legality of a detention into the list of rights that cannot be limited during a state of war or emergency. The State party should also ensure that the information on all persons deprived of their liberty is effectively entered in registers and/or records in accordance with standard protocols and that the information contained therein includes, as a minimum, that required under article 17 (3) of the Convention.

State party's reply

The reply of the State party can be consulted in CED/C/MNE/CO/1/Add.1.

Committee's evaluation

[C]: The Committee, while welcoming the information provided by the State party, considers that it does not have sufficient information regarding the actions taken to implement its recommendation since the adoption of its concluding observations (CED/C/MNE/CO/1). The Committee notes that the State party has not provided

information on any measures taken to ensure that, in practice, all persons deprived of their liberty can communicate without delay with their families or any person of their choosing and have access to an independent lawyer from the very outset of the deprivation of liberty. Furthermore, the Committee observes that it has not received any information on any action taken by the State party to incorporate the right to challenge the legality of a detention into the list of rights that cannot be limited during a state of war or emergency. Finally, while taking note of the law on the enforcement of sentences of imprisonment, fines and security measures and the rulebook mentioned in the State party's replies, the Committee notes that it has not received sufficient information with regard to how these and any other applicable legislation and measures ensure that the information on all persons deprived of their liberty is effectively entered in registers and/or records in accordance with standard protocols and that the information contained therein includes, as a minimum, that required under article 17 (3) of the Convention. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations, to provide:

(a) Information that allows the Committee to confirm that, in practice, all persons deprived of their liberty within the Montenegrin jurisdiction do have access to an independent lawyer, not only during the interrogation process but from the very outset of the deprivation of liberty;

(b) Information on any measures undertaken to incorporate the right to challenge the legality of a detention into the list of rights that cannot be limited during a state of war or emergency;

(c) Additional information on the informational register of detainees and arrested persons, including whether it contains all the information required under article 17 (3) of the Convention. In particular, the State party shall refer to the inclusion of the provisions of article 17 (3) (b) (d) (e) (f) (g) and (h) of the Convention.

Paragraph 29: The State party should consider introducing the legislative amendments necessary to establish a definition of victim that conforms to that contained in article 24 (1) of the Convention in order to ensure the full enjoyment by any individual who has suffered harm as the direct result of an enforced disappearance of the rights set forth in the Convention, in particular the rights to the truth and reparation enshrined in its article 24 (2), 24 (4) and 24 (5).

State party's reply

The reply of the State party can be consulted in CED/C/MNE/CO/1/Add.1.

Committee's evaluation

[C]: While noting the legal provisions relating to the rights of victims mentioned by the State party, the Committee observes that it has not been provided with sufficient information about any action taken to implement its recommendation since the adoption of its concluding observations (CED/C/MNE/CO/1). The Committee further notes that no information has been provided by the State party that may allow the Committee to confirm if a victim of enforced disappearance is obliged to initiate a criminal procedure to be considered as such. The Committee is also concerned that no provision is made in the State party's legislation for a comprehensive system of reparation that fully meets the requirements of article 24 (2), (4) and (5) of the Convention and is applicable to all cases of enforced disappearance. In particular, the State party did not refer to other forms of reparation such as restitution, rehabilitation, satisfaction and guarantees of non-repetition, which are essential in cases of enforced disappearance. Finally, the Committee is concerned that the right of victims to know the truth regarding the fate of the disappeared person is not explicitly guaranteed. In view of the above, the Committee recalls paragraph 29 of its concluding observations and reiterates its recommendation. It requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations, to provide information on the measures taken to implement the

Montenegro

recommendation.

Action to be taken

A letter should be sent to the State party communicating the Committee's evaluation.

Follow-up information on the implementation of all the recommendations to be submitted by: 18 September 2021

C. Burkina Faso

Tenth session (March 2016)

Burkina Faso

Concluding observations:	CED/C/BFA/CO/1, adopted 16 March 2016
Recommendations to be followed up:	Paragraphs 10, 14 and 32
Reply:	CED/C/BFA/CO/1/Add.1, due 18 March 2017; received 23 March 2017

Paragraph 10: The Committee encourages the State party to expedite the process of amending the law establishing the National Human Rights Commission so as to make the Commission fully independent and to allocate to it sufficient human and financial resources to enable it to function properly, in full conformity with the Paris Principles. It invites the State party to include the issue of enforced disappearances explicitly in its mandate.

State party's reply

The reply of the State party can be consulted in CED/C/BFA/CO/1/Add.1.

Committee's evaluation

[B]: The Committee takes note of the information provided by the State party and welcomes the adoption of Act No. 001-2016/AN, dated 24 March 2016, on the establishment of the National Human Rights Commission and the adoption, on 9 March 2017, of a decree on the organization and functioning of the Commission. Nevertheless, the Committee notes that the Commission is not yet operational and that enforced disappearance is not explicitly mentioned in its remit. Therefore, the Committee, recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 47 of its concluding observations (CED/C/BFA/CO/1), to report on the inclusion of the issue of enforced disappearance in the mandate of the Commission; to provide any further information with regard to the process of making the Commission operational; and to include information on the measures taken to ensure that the Commission is allocated sufficient human and financial resources to enable it to function properly.

Paragraph 14: The Committee recommends that the State party expedite the amendment of the Criminal Code designed to implement the Convention with a view to defining and criminalizing enforced disappearance as a separate offence, in accordance with the definition in article 2 of the Convention, punishable by appropriate penalties which take into account its extreme seriousness, while excluding the death penalty.

State party's reply

The reply of the State party can be consulted in CED/C/BFA/CO/1/Add.1.

Burkina Faso

Committee's evaluation

[C]: The Committee takes note of the information provided by the State party and welcomes its statement that the new Criminal Code will define and criminalize enforced disappearance as a separate offence. However, the Committee notes that the new Criminal Code is still under review and therefore the crime of enforced disappearance is still not defined and criminalized in line with article 2 of the Convention. The Committee would like to emphasize that criminalizing enforced disappearance as an autonomous offence can serve as an important safeguard against impunity and as a preventive measure to ensure the non-occurrence of this crime. Therefore, the lack of an autonomous offence for this crime may prevent the State party from accomplishing its obligations to combat impunity for the crime, guarantee the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and to make the offence of enforced disappearance punishable by appropriate penalties, in line with article 7 of the Convention. Therefore, recalling its recommendation, the Committee requests the State party, when submitting information in accordance with paragraph 47 of its concluding observations (CED/C/BFA/CO/1), to provide information and/or any update regarding the inclusion of a definition and the criminalization of enforced disappearance as a separate offence, which is in conformity with articles 2 and 4 of the Convention and is punishable by appropriate penalties commensurate with the extreme seriousness of the crime, while avoiding the imposition of the death penalty.

Paragraph 32: The Committee encourages the State party to take the necessary measures to provide in its criminal legislation for a specific remedy that would allow all categories of persons covered by the Convention to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful, in accordance with the provisions of article 17 (2) (f) of the Convention and other relevant international standards.

State party's reply

The reply of the State party can be consulted in CED/C/BFA/CO/1/Add.1.

Committee's evaluation

[C]: The Committee takes note with appreciation of the rights enshrined in articles 144, 146, 147 and 148 of the Criminal Code of the State party. Nonetheless, this legislation does not refer to a specific remedy that can be used to challenge the lawfulness of a detention before a competent court, and without delay, in line with article 17 (2) (f) of the Convention. Thus, the articles referred to by the State party do not establish an expeditious judicial remedy that would allow all persons covered by the Convention to challenge the lawfulness of their detention. Therefore, the Committee, recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 47 of its concluding observations (CED/C/BFA/CO/1), to provide information on any measures taken to provide for a specific remedy in its criminal legislation that would allow all persons covered by the Convention to take proceedings before a competent court, so that that court may decide without delay on the lawfulness of their detention and order their release if the detention is found to be unlawful, in accordance with the provisions of article 17 (2) (f) of the Convention.

Action to be taken

A letter should be sent to the State party communicating the Committee's evaluation.

Follow-up information on the implementation of all the recommendations to be submitted by: 18 March 2022

D. Kazakhstan

Tenth session (March 2016)

Kazakhstan

Concluding observations:	CED/C/KAZ/CO/1, adopted 16 March 2016
Recommendations to be followed up:	Paragraphs 12, 20 and 22
Reply:	CED/C/KAZ/CO/1/Add.1, due 18 March 2017; received on 29 March 2017

Paragraph 12: The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible:

(a) **Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty;**

(b) **Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.**

State party's reply

The reply of the State party can be consulted in CED/C/KAZ/CO/1/Add.1.

Committee's evaluation

[C]: While taking note of the information provided by the State party and welcoming its intention of giving the issue further consideration in its 2017-2021 plan of action, the Committee observes that the crime of enforced disappearance is still not incorporated into domestic legislation as an autonomous offence, in line with article 2 of the Convention. The Committee would like to emphasize that criminalizing enforced disappearance as an autonomous offence can serve as an important safeguard against impunity and as a preventive measure to ensure the non-occurrence of this crime. Therefore, the lack of an autonomous offence for this crime may prevent the State party from accomplishing its obligations to combat impunity for the crime, guarantee the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and make the offence of enforced disappearance punishable by appropriate penalties in line with article 7 of the Convention. The Committee further observes that no information has been provided by the State party on any measures taken to ensure that enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 37 of its concluding observations (CED/C/KAZ/CO/1), to provide:

(a) Information on the progress achieved to criminalize enforced disappearance as an autonomous offence in line with article 2 of the Convention;

(b) Information on steps taken to ensure that the offence is punishable by appropriate penalties, which take into account its extreme seriousness, excluding the imposition of the death penalty, and to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention;

(c) Information on any measures taken to ensure that enforced disappearance as a crime against humanity is criminalized in accordance with article 5 of the Convention.

Paragraph 20: The Committee recommends that the State party adopt the measures necessary to guarantee in practice, from the outset of the deprivation of liberty, that all persons have access to a lawyer, and that their relatives or any other person of their choice and, in the case of foreigners, their consular authorities, are informed of

the deprivation of liberty and of the place where the person is being held. It also recommends that the State party also guarantee in practice that any acts hindering the observance of these rights be adequately sanctioned.

State party's reply

The reply of the State party can be consulted in CED/C/KAZ/CO/1/Add.1.

Committee's evaluation

[C]: The Committee welcomes the information provided by the State party and notes the provisions of article 16 (2) of the Constitution, articles 67 and 131-135 of the Code of Criminal Procedure and article 414 (4) of the Criminal Code. However, the Committee observes that the State has not provided information on any measures taken to implement its recommendation since the adoption of its concluding observations (CED/C/KAZ/CO/1). In particular, the Committee is concerned that, according to the legislation mentioned in the State party's replies, access to a lawyer seems to be restricted to those persons facing criminal procedures and is not guaranteed from the outset of the deprivation of liberty. In addition, the Committee notes that it has not received any information regarding actions taken to ensure that any acts hindering the observance of the rights mentioned in paragraph 20 of its concluding observations are adequately sanctioned. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 37 of its concluding observations, to provide:

(a) Information on any actions taken to ensure that, in practice, all persons have access to a lawyer, not only when a criminal procedure is opened, but from the outset of the deprivation of liberty;

(b) Information on measures taken to guarantee in practice that any acts hindering the observance of these rights are adequately sanctioned.

Paragraph 22: The Committee recommends that the State party take the steps necessary to ensure that:

(a) **All deprivations of liberty are entered in uniform registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;**

(b) **Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are adequately sanctioned.**

State party's reply

The reply of the State party can be consulted in CED/C/KAZ/CO/1/Add.1.

Committee's evaluation

[B]: The Committee takes note of the information provided by the State party and welcomes the approval of the regulations on the registration of persons being held in correctional facilities by Order No. 107 of 13 February 2017. The Committee also welcomes the introduction of an electronic record-keeping system for persons visiting or brought before law enforcement bodies. However, the Committee notes that it has not received information on any action taken, since the adoption of its concluding observations (CED/C/KAZ/CO/1), to ensure that all registers and/or records include, as a minimum, the information required under article 17 (3) of the Convention. In addition, the Committee observes that no information has been provided by the State party regarding its recommendation to ensure that registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, that the officials responsible are adequately sanctioned. Therefore, the Committee, recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 37 of

Kazakhstan

its concluding observations, to provide:

(a) Additional information about existing registers, including whether they contain, as a minimum, the information required under article 17 (3) of the Convention;

(b) Information on any measures undertaken to ensure that registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, that the officials responsible are adequately sanctioned.

Action to be taken

A letter should be sent to the State party communicating the Committee's evaluation.

Follow-up information on the implementation of all the recommendations to be submitted by: 18 March 2022

E. Tunisia

Tenth session (March 2016)

Tunisia

Concluding observations:	CED/C/TUN/CO/1, adopted 15 March 2016
Recommendations to be followed up:	Paragraphs 15, 23 and 30
Reply:	CED/C/TUN/CO/1/Add.1, due 18 March 2017; received 24 March 2017

Paragraph 15: The Committee recommends that the State party adopt the legislative measures necessary to ensure that, as soon as possible:

(a) **Enforced disappearance is incorporated into domestic law as an autonomous offence, in accordance with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty. It also invites the State party to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention;**

(b) **Enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.**

State party's reply

The reply of the State party can be consulted in CED/C/TUN/CO/1/Add.1.

Committee's evaluation

[B]: The Committee takes note of the information provided by the State party and welcomes the establishment of a working group to draft a new bill on enforced disappearance, which will define enforced disappearance as an autonomous offence, in line with article 2 of the Convention; will provide for appropriate penalties that take into account its seriousness; and will establish specific mitigating and aggravating circumstances in line with article 7 (2) of the Convention. However, the Committee notes that this bill has not yet entered into force and that it has not received sufficient information on its content with regard to the wording of the definition of enforced disappearance, the penalties provided for this crime and the mitigating and aggravating circumstances established. The Committee would like to emphasize that criminalizing enforced disappearance as an autonomous offence can serve as an important safeguard against impunity and as a preventive measure to ensure the non-occurrence of this crime. Therefore, the lack of an autonomous offence for this crime may prevent the State party

from accomplishing its obligations to combat impunity for the crime, guarantee the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person and make the offence of enforced disappearance punishable by appropriate penalties in line with article 7 of the Convention. Finally, the Committee observes that no information has been provided with regard to its recommendation to ensure that enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention. Therefore, the Committee reiterates its recommendation and requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations (CED/C/TUN/CO/1), to provide:

(a) Additional information on the content of the bill mentioned above, including penalties and aggravating and mitigating circumstances, as well as the progress achieved to criminalize enforced disappearance as an autonomous offence in line with the definition contained in article 2 of the Convention;

(b) Information on actions taken to ensure that the offence is punishable by appropriate penalties that take into account its extreme seriousness, while avoiding the imposition of the death penalty and to establish the specific mitigating and aggravating circumstances provided for in article 7 (2) of the Convention;

(c) Information on any measures taken to ensure that enforced disappearance as a crime against humanity is criminalized in accordance with the standards provided for under article 5 of the Convention.

Paragraph 23: The Committee recommends that the State party intensify its efforts to ensure that, without delay:

(a) **All past cases of enforced disappearance are investigated thoroughly and impartially and that investigations continue until the fate of the disappeared persons has been clarified;**

(b) **All those involved in the perpetration of an enforced disappearance, including military and civilian superiors, are prosecuted and, if found guilty, punished in accordance with the gravity of their acts;**

(c) **All persons who were forcibly disappeared and whose fate is not yet known are searched for and located and that, in the event of death, their remains are identified, respected and returned;**

(d) **All persons who have suffered harm as the direct result of an enforced disappearance receive adequate reparation that includes the means for their rehabilitation and takes account of gender issues, as well as prompt, fair and adequate compensation.**

State party's reply

The reply of the State party can be consulted in CED/C/TUN/CO/1/Add.1.

Committee's evaluation

[C]: The Committee, while welcoming the information provided by the State party, considers that it does not have sufficient information regarding the actions taken to implement its recommendation since the adoption of its concluding observations (CED/C/TUN/CO/1). In particular, the Committee observes that it has not received any information on any measures taken, before the entry into force of the bill on enforced disappearances, to ensure that all past cases of enforced disappearance are investigated thoroughly and impartially and that investigations continue until the fate of the disappeared persons has been clarified. The Committee also notes that it has not received any information on any actions taken to ensure that all those involved in the perpetration of an enforced disappearance, including military and civilian superiors, are prosecuted and, if found guilty, punished in accordance with the gravity of their acts. In addition, the

Committee observes that the State has not provided any information with regard to any actions taken to ensure that all persons who were forcibly disappeared, and whose fate is not yet known, are searched for and located and that, in the event of death, their remains are identified respected and returned. Finally, the Committee notes that the State party has not provided sufficient information on any action taken to ensure that all persons who have suffered harm as the direct result of an enforced disappearance, including those that may not be covered by Organizational Act. No. 53, dated 24 December 2013, receive adequate reparation that includes the means for their rehabilitation, as well as prompt, fair and adequate compensation. Therefore, the Committee, recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations, to provide:

(a) Information on any measures taken, before the entry into force of the bill on enforced disappearances, to ensure that all past cases of enforced disappearance are investigated thoroughly and impartially and that investigations continue until the fate of the disappeared persons has been clarified;

(b) Information on the results achieved with respect to the prosecution of all those involved in the perpetration of an enforced disappearance, including military and civilian superiors and, if found guilty, information on the penalties imposed;

(c) Information on concrete measures taken to search and locate all persons who were forcibly disappeared and whose fate is not yet known and, in the event of death, measures taken to identify, respect and return their remains to their families;

(d) Information on the results achieved regarding the adequate reparation and compensation of the rights of the victims of an enforced disappearance, including those that may not be covered by Organizational Act. No. 53, dated 24 December 2013, in accordance with article 24 of the Convention.

Paragraph 30: The Committee recommends that the State party adopt all the measures necessary to ensure that all persons deprived of liberty, irrespective of the offence of which they are accused, are afforded, de jure and de facto, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided under article 17 of the Convention. In particular, the Committee recommends that the State party guarantee that:

(a) **All persons deprived of liberty have access to a lawyer from the outset of deprivation of liberty and can communicate without delay with their relatives or any person of their choosing and, in the case of foreigners, with their consular authorities;**

(b) **Any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention, including during the custody period;**

(c) **All deprivations of liberty, without exception, are entered in uniform registers and/or records, which include, as a minimum, the information required under article 17 (3) of the Convention;**

(d) **Registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately and are subject to periodic checks and, in the event of irregularities, the officials responsible are adequately sanctioned.**

State party's reply

The reply of the State party can be consulted in CED/C/TUN/CO/1/Add.1.

Committee's evaluation

[B]: The Committee takes note of the information provided by the State party and welcomes the new amendment to the Criminal Procedure Code, which entered into force in June 2016. However, while taking note of the information provided in paragraph 15,

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the Committee observes that it has not received any information with regard to the measures taken to provide any person with a legitimate interest with access to at least the information listed in article 18 (1) of the Convention, including during the custody period. In addition, the Committee is concerned about the restrictions foreseen in the new act, whereby access to a lawyer is restricted to working hours and meeting time with the person deprived of liberty is restricted to 30 minutes throughout the period of the detention. In that respect, the Committee notes that the State party has not provided sufficient information regarding any measures taken to ensure that persons deprived of liberty have access to a lawyer from the outset of deprivation of liberty. Furthermore, the Committee observes that the State party has not provided information on any measures taken to ensure that all persons deprived of liberty can communicate without delay with their relatives or any person of their choosing, including consular authorities in the case of foreigners. Finally, the Committee is concerned that the contents of the special register mentioned in paragraph 17 of the State party's reply to the Committee's concluding observations (CED/C/TUN/CO/1/Add.1) do not conform to the information required under article 17 (3) of the Convention. In this respect, the Committee observes that it has not received information on any other registers that may exist and their content, or on any measures taken to ensure that all registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, that the officials responsible are adequately sanctioned. Therefore, the Committee, recalling its recommendation, requests the State party, when submitting information in accordance with paragraph 40 of its concluding observations (CED/C/TUN/CO/1), to provide the following information:

(a) Additional information about the informational register of detainees and arrested persons, including whether it contains all the information required under article 17 (3) of the Convention. In particular, the State party shall refer to the inclusion of the provisions of article 17 (3) (c) (d) (f) (g) and (h) of the Convention;

(b) Measures undertaken to ensure that registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, that the officials responsible are adequately sanctioned;

(c) Information that allows the Committee to confirm that, in practice, all persons deprived of their liberty have access to an independent lawyer from the outset of the deprivation of liberty and can communicate with any persons of their choice, including consular authorities in the case of foreigners.

Action to be taken

A letter should be sent to the State party communicating the Committee's evaluation.

Follow-up information on the implementation of all the recommendations to be submitted by: 18 March 2022